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County Clerk/Recorder
Contra Costa County
555 Escobar St.
Martinez, CA 94553

April 7, 2009

Office of Administrative Law
Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

RE: OAL File No. 2009-0324-01EE
Election Manual Tally Requirements in Close Contests (PEMT)
Public Comments: Contra Costa County Registrar of Voters

Dear OAL Reference Official:

PEMT Emergency Regulations are not warranted.

No emergency exists. The public is adequately protected with our canvass requirements that include a random hand count of election night results for the sole purpose of triple checking tally equipment programming. Close elections, as determined by certified results, are subjected to a complete hand count option.

PEMT Emergency Regulations are mis-directed.

The SOS has had ample time to go through the established administrative rule writing procedures. The SOS had initiated a review of election audits. Having completed their task and reported to the Secretary, instead of going through the prescribed procedures, the Secretary exceeded her authority by unilaterally mandating her regulations. Having lost a court case on this issue, the Secretary chose to promulgate emergency regulations. This is the second set of emergency regulations being proposed on this subject. Using the emergency regulations process deprives us of adequate time to review the proposed "emergency" rules.

PEMT Emergency Regulation cost estimates are unsubstantiated and grossly underestimated.

There is no basis for the true cost impact of these regulations. Based upon my experience with this PEMT for last November, (\$1.75 per ballot contest reviewed), one close

statewide contest could cost fifteen million dollars (\$15,000,000.00). Not only do I face a statewide election on May 19, 2009, with no budgeted reimbursement, the Emergency Regulations could add between \$45,500.00 and \$455,000.00 to that election with a 50% turn out.

In addition, due to a pending vacancy in the 10th Congressional District which includes my county, I could face two more Special Vacancy Elections over the next six months. With a projected 25% turn out, these regulations could cost my county an additional \$21,900.00 to \$219,000.00.

The PEMT Emergency Regulations are ineffectual.

For the November 2006 and February 2008 Elections, fully 20% of the statewide vote was not reported (tallied) election night. (These are mainly vote-by-mail ballots that arrive the last few days before the election or are turned in at the polls.) For the November, 2008 Presidential Election, that number increased to 24% or over 3.27 million ballots, ballots that would not be covered for review under these proposed regulations.

I favor an approach that would take close elections, after certification, and apply a hand-count option for close elections and where the state identifies the reimbursements for such a program. This is a far more reasonable and effective approach to dealing with defined close elections than that which is proposed as emergency regulations.

Very truly yours;

STEPHEN L. WEIR

Cc: Secretary of State